

**AMEND SECTION 606 (c) OF COMMUNICATIONS ACT OF 1934
(ELECTROMAGNETIC RADIATIONS)**

HEARING
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
EIGHTY-SECOND CONGRESS
FIRST SESSION

ON
S. 537
AN ACT TO FURTHER AMEND THE
COMMUNICATIONS ACT OF 1934

AUGUST 22, 1951

Printed for the use of the Committee on
Interstate and Foreign Commerce



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1951

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

ROBERT CROSSER, Ohio, *Chairman*

LINDLEY BECKWORTH, Texas
J. PERCY PRIEST, Tennessee
OREN HARRIS, Arkansas
DWIGHT L. ROGERS, Florida
ARTHUR G. KLEIN, New York
THOMAS B. STANLEY, Virginia
WILLIAM T. GRANAHAH, Pennsylvania
JOHN A. MCGUIRE, Connecticut
F. ERTEL CARLYLE, North Carolina
JOHN BELL WILLIAMS, Mississippi
PETER F. MACK, JR., Illinois
HOMER THORNBERRY, Texas
LOUIS B. HELLER, New York
KENNETH A. ROBERTS, Alabama
MORGAN M. MOULDER, Missouri
HARLEY O. STAGGERS, West Virginia

CHARLES A. WOLVERTON, New Jersey
CARL HINSHAW, California
LEONARD W. HALL, New York
JOSEPH P. O'HARA, Minnesota
ROBERT HALE, Maine
JAMES I. DOLLIVER, Iowa
JOHN W. HESELTON, Massachusetts
HUGH D. SCOTT, JR., Pennsylvania
JOHN B. BENNETT, Michigan
RICHARD W. HOFFMAN, Illinois
J. EDGAR CHENOWETH, Colorado
JOHN V. BEAMER, Indiana
HARMAR D. DENNY, JR., Pennsylvania

ELTON J. LAYTON, *Clerk*

CONTENTS

| | Page |
|--|------|
| Text of S. 537..... | 1 |
| Report of— | |
| Air Force Department..... | 2 |
| Commerce Department..... | 6 |
| Federal Civil Defense Administration..... | 4 |
| Federal Communications Commission..... | 3 |
| Federal Power Commission..... | 5 |
| Justice Department..... | 6 |
| Treasury Department..... | 6 |
| Statement of— | |
| Ankenbrandt, Maj. Gen. Francis L., Director of Communications, United States Air Force..... | 7 |
| Hardy, Ralph W., director, Government relations, National Associa- tion of Radio and Television Broadcasters..... | 24 |
| Webster, Edward M., Commissioner, Federal Communications Com- mission..... | 19 |
| Additional information submitted for the record by— | |
| National Association of Radio and Television Broadcasters, letter regarding amendment from Ralph W. Hardy, director, Government relations..... | 25 |
| Radio-Television Manufacturers Association, letter from Glen McDaniel, president..... | 7 |

AMEND SECTION 606 (C) OF COMMUNICATIONS ACT OF 1934 (ELECTROMAGNETIC RADIATIONS)

WEDNESDAY, AUGUST 22, 1951

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met at 10 a. m., Hon. Robert Crosser (chairman) presiding.

The CHAIRMAN. The committee will be in order.

Gentlemen, the committee is honored this morning with the presence of the participants in the Japanese Diet telecommunication training group and the Army project description group.

The group, all members of the Japanese House of Representatives, and the chairman of the Telecommunications Committee of the Japanese House of Counselors.

The group is sponsored by the Federal Communications Commission, and the committee is honored by the visit of these gentlemen to the meeting this morning.

It is a great pleasure to have you here with us this morning, and I hope that your visit to America will result in fine contacts with our people here.

Would one of your members like to say a word?

Mr. YAMADA. Honorable president of the committee, we are Diet members representing the Telecommunications Committee of the Diet. It is a privilege and an honor to be present at this meeting this morning.

As the president of the honorable committee has just said, we have a great obligation, and we will try to improve our telecommunications to American standards.

We thank you very much, indeed.

The CHAIRMAN. We will now take up for consideration S. 537.

(The bill referred to is as follows:)

[S. 537, 82d Cong., 1st sess.]

AN ACT To further amend the Communications Act of 1934

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 606 (c) of the Communications Act of 1934, as amended, is amended to read as follows:

“(c) Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission,

and may cause the closing of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and equipment, by any department of the Government under such regulations as he may prescribe upon just compensation to the owners."

SEC. 2. Section 606 of such Act is further amended by adding at the end thereof a new subsection as follows:

"(h) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing prohibited or declared to be unlawful pursuant to the exercise of the President's powers and authority under this section, or who willfully and knowingly omits or fails to do any act, matter, or thing which he is required to do pursuant to exercise of the President's powers and authority under this section, or who willfully and knowingly causes or suffers such omission or failure shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for a term of not more than one year, or both, and, if a firm, partnership, association, or corporation, be fined not more than \$5,000."

Passed the Senate July 23 (legislative day, June 27), 1951.

Attest:

LESLIE L. BIFFLE, *Secretary.*

The CHAIRMAN. The chairman will submit for the record at this time the following reports and the following communication.

(The reports and communication are as follows:)

DEPARTMENT OF THE AIR FORCE,
Washington, August 17, 1951.

HON. ROBERT CROSSER,

*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.*

DEAR MR. CHAIRMAN: I refer to your request for the views of the Department of Defense with respect to S. 537, an act to further amend the Communications Act of 1934. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense.

The purpose of S. 537 is to provide more adequate Federal control in regard to all stations or devices capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles which are suitable for use as a navigational aid beyond 5 miles.

Current concepts of warfare and recent experience demonstrate the necessity to control electromagnetic radiations in the United States, its Territories and possessions, for the purpose of denying their use to a potential enemy for navigation of piloted or pilotless aircraft or missiles directed toward targets in the United States.

The authority of this proposed legislation must be provided now in order that further planning and preparation may be completed and Air Defense plans implemented without delay in the event of an air attack. It is requested that further justification for the urgent necessity of this legislation be given to you in secret session. The Department of Defense concurs in S. 537 as passed by the Senate and requests that your committee hold hearings at an early date.

The Department of Defense is unable to estimate the fiscal effects of the proposed legislation.

This report has been coordinated among the departments and boards of the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that this legislation would be in accord with the program of the President.

Sincerely yours,

R. L. GILPATRIC,
Assistant Secretary of the Air Force.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 13, 1951.

HON. ROBERT CROSSER,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D. C.

DEAR CONGRESSMAN CROSSER: This is in response to your letter of July 25, 1951, requesting a report and comment on Senate bill No. 537, which is a bill, passed by the Senate on July 23, 1951, to amend section 606 of the Communications Act of 1934, as amended.

The purpose of section 1 of this bill is to clarify the provisions of existing law, as stated in section 606 (c) of the Communications Act, so that there would be no doubt that the powers of the President as given by that section would be clearly broad enough to encompass the control, closure, and use not only of stations for radiocommunication but also of electronic devices of all kinds capable of emitting electromagnetic radiations within certain frequency limits which might be of navigational aid beyond a specified distance to the aircraft or missiles of an enemy engaged in an attack by air upon this country. The purpose of section 2 of the bill is the establishment of certain criminal sanctions which would be available in aid of the enforcement of the powers of the President as given by all of section 606 of the Communications Act, including, of course, section 606 (c) as it would be amended by section 1 of this bill.

Section 606 (c) provides, in substance, that the President shall have authority, upon proclamation of war, threat of war, state of public peril or disaster, or other national emergency, or in order to preserve the neutrality of the United States, for such time as he may see fit, to suspend or amend the rules and regulations of this Commission applicable to "any radio station" within the jurisdiction of the United States, and to order the closing of "any station for radio communication" and the removal of its apparatus and equipment, or to authorize any department of the Government to use or control "any such station and/or its apparatus and equipment," under such regulations as he may prescribe, upon just compensation to the owners.

As appears from the preceding paragraph, section 606 (c) speaks in terms of the use, closure, and control "of any station for radiocommunication." The history of the consideration of this bill in the Senate shows that this particular language of section 606 (c) created a doubt in the minds of the Department of Defense whether the Presidential powers of use, closure, and control as given by section 606 (c) included radio facilities not primarily intended for radiocommunication which the Department of Defense believed might be useful for navigational aid purposes to a potential enemy. This doubt prompted the Department of Defense to seek clarifying legislation, and Senate bill No. 537 resulted.

The Commission is of the opinion that section 1 of the bill would accomplish the objectives of the Department of Defense in clarifying the scope of the Presidential powers under section 606 (c) to use, control, and close radio facilities of all kinds which the Department of Defense believed might be potentially useful to an enemy for navigational aid purposes. Moreover, the Commission is of the opinion that such clarification is desirable.

With respect to section 2 of the bill, which would provide a new subsection, numbered 606 (h), establishing certain criminal sanctions for the knowing violation of any order issued pursuant to an exercise of the President's authority under section 606, the Commission is of the opinion that such an amendment should be adopted since there exists a question as to whether there is any criminal sanction for willful or knowing violation of orders issued pursuant to an exercise of the existing authority of the President under section 606; addition of the proposed new language in section 606 (c) to clarify the scope of the President's authority under that section as including electronic devices not primarily intended for communications purposes, makes it especially desirable that sanctions for violations of orders issued pursuant to an exercise of the President's authority under section 606 be expressly spelled out in section 606.

None of the specific subsections of section 606 contains, in itself, any criminal sanction or penalty, nor is there any one criminal provision, expressly applicable to section 606 as a whole. It is therefore necessary to look to the general criminal provisions of the Communications Act which are found in sections 501 and 502, in order to determine whether and to what extent these general provisions are applicable to an exercise of the President's authority under section 606. Section 501 makes it a felony, punishable by a fine up to \$10,000 or im-

prisonment up to 2 years, for any person willfully and knowingly to do anything "in this Act prohibited or declared to be unlawful" or to fail to do anything "in this Act required to be done" or to cause or suffer "such omission or failure." It is to be noted, however, that none of the provisions of section 606, in and of themselves, require anybody to do anything, or to refrain from doing anything; instead they authorize the President, or his delegate, to take certain types of action. Thus, for example, if the President ordered a radio station to be closed, or if, as would be clearly possible under the proposed new language of section 606 (c), the President's delegate ordered the operators of certain types of electronic equipment to refrain from operating such equipment during the hours in which an air raid is in progress, it could be argued that persons refusing to comply with such orders are doing nothing prohibited by or declared unlawful "in this act" or refusing to do things "in this act required to be done." Thus, it is possible that violations of orders made pursuant to an exercise of the President's authority under section 606 would be held not to be in violation of section 501 of the Communications Act.

The other criminal provision of the Communications Act, section 502, would appear to be even more doubtful of application. This section makes it a misdemeanor, punishable by a fine of \$500 for each day of offense, for any person who willfully and knowingly violates any "rule or regulation, restriction or condition made or imposed by the Commission under the authority of this act * * * or made or imposed by any international or wire communications treaty or convention * * *." The difficulty with this provision is that, except for violations of treaty regulations, not relevant to the present discussion, it is restricted to violations of rules and regulations "made or imposed by the Commission under the authority of this act." In view of the strict construction of any criminal sanction in any statute, it is possible that any order or rule issued pursuant to an exercise of the President's authority under section 606 of the act may not be considered to be one "made or imposed by the Commission under the authority of this act." For even if the rule or order were formally issued by the Commission, operating pursuant to the direction or authority of the President, it may be considered incongruous to hold that violation of a rule, regulation, restriction, or condition prescribed by the Commission under delegation of authority from the President would be a criminal offense where it would not be a criminal offense to violate the same kind of rule, regulation, restriction, or condition if issued by the President himself or by any other Presidential delegate.

For the reasons above indicated, the Commission believes that a new subsection should be written into section 606 incorporating express criminal sanctions for the knowing violation of its provisions. Moreover, section 2 of the bill appears to us to achieve this general objective. As to the particular details of the criminal sanctions set forth in this section 2, we refrain from taking any specific position for the reason that that is considered to be a matter which is not within the special competence of this Commission.

The Commission appreciates this opportunity to comment on Senate bill 537, and will, of course, be available to afford you or your committee's staff such additional assistance as you may desire.

The Bureau of the Budget has informed us that it has no objection to the submission of these comments to your committee.

By direction of the Commission:

WAYNE COY, *Chairman.*

FEDERAL CIVIL DEFENSE ADMINISTRATION,
Washington, D. C., August 21, 1951.

HON. ROBERT CROSSER,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of August 10, 1951, requesting a report by the Federal Civil Defense Administration on S. 537, Eighty-second Congress, an act to further amend the Communications Act of 1934 which, as amended, passed the Senate on July 23, 1951. The bill would amend section 606 of the Communications Act of 1934, as amended, to extend the President's authority to control or use radio stations to cover all devices emitting electro-magnetic radiations capable of being utilized by an enemy for navigational purposes.

While we recognize the military necessity for a plan which would minimize the use of electro-magnetic devices by an enemy for navigational purposes in an air attack against the United States, we are vitally concerned about the adoption of any measure for radio control which might deny civil defense authorities the use of broadcasting facilities during a civil defense emergency. As the committee is undoubtedly aware, under the terms of the Federal Civil Defense Act of 1950 (Public Law 920, 81st Cong), the Administrator is charged with the responsibility of making appropriate provisions for necessary civil defense communications and for dissemination of warnings of enemy attacks to the civilian population.

We have been assured that the planning for the emergency control of communications devices does not contemplate action which would deny to the Federal Civil Defense Administration the use of communications facilities vital to the execution of our mission. Accordingly, in the light of this assurance, we are pleased to recommend favorable consideration of the bill in the interest of national security.

We are advised that the Budget Bureau has no objection to the submission of this report.

Sincerely,

J. J. WADSWORTH,
Deputy Administrator.

FEDERAL POWER COMMISSION,
Washington, D. C., August 22, 1951.

HON. ROBERT CROSSER,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: In accordance with your request there are attached two copies of a report by the Federal Power Commission on the bill S. 537, to further amend the Communications Act of 1934.

The Bureau of the Budget advised that there was no objection to the submission of a similar report to the Senate committee.

Sincerely,

MON C. WALLGREN, *Chairman.*

Enclosure No. 74077.

FEDERAL POWER COMMISSION REPORT ON S. 537, EIGHTY-SECOND CONGRESS, A BILL TO FURTHER AMEND THE COMMUNICATIONS ACT OF 1934

This bill would not affect or involve any of the direct functions of the Commission, but it might have considerable effect upon the electric utilities, both public and private. The bill intends to set up controls over all electromagnetic radiation between 10 and 100,000,000 kilocycles. This range is all inclusive as it covers all wave lengths from 18 miles down to one-tenth of an inch.

The electric utilities use such electromagnetic radiation for a wide variety of purposes. Perhaps the most common is for communication between key points of their systems, including the transmission of messages between supervisors and repair trucks. It is also used for telemetering, relay operation, line testing, fault location and the remote control of switches, lighting circuits, power plants, hot water heaters, etc.

Limitation of any of the communication and related uses of the so-called carrier current might seriously affect electric utility system operation because communications, the remote control of electrical equipment, and automatic reports on its condition, are basic to all power transmission operations.

Electromagnetic radiations within the ranges indicated are set up accidentally in the ordinary course of operation by many types of electrical equipment used by the power companies, such as the radiation from transmission lines produced by corona discharge or defective contact or by leakage over defective insulators, and transformer or switch bushings, etc. Electric utilities are doing all that they can to control this type of radiation since they result in loss of power, but it is practically impossible to prevent.

MON C. WALLGREN, *Chairman.*

DEPARTMENT OF JUSTICE
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, August 21, 1951.

HON. ROBERT CROSSER,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (S. 537) to further amend the Communications Act of 1934.

The bill would amend section 606 (c) of the Communications Act of 1934, as amended, so as to include within its scope "any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond 5 miles," and to condition the President's action under the section upon his determination that such action is "necessary in the interest of national security or defense."

The bill would also add a new subsection to section 606 providing a maximum fine of \$1,000 or imprisonment for not more than 1 year, or both, or in the case of firms, partnerships, associations, or corporations, a maximum fine of \$5,000, for violating any orders or regulations promulgated by the President pursuant to section 606 of the act.

The present section 606 (c) does not give the President authority to act with respect to the devices described above, and the President's action under the subsection is predicated upon certain stated conditions without reference to his determination that such action is necessary in the interest of national security or defense.

Whether the bill should be enacted presents a question of policy concerning which the Department of Justice prefers not to make any recommendation.

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

TREASURY DEPARTMENT,
Washington, August 21, 1951.

HON. ROBERT CROSSER,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Further reference is made to your request for the views of the Treasury Department on S. 537 to further amend the Communications Act of 1934.

The bill would provide authority for the President, if he deems it necessary in the interest of national security or defense, to control certain electromagnetic equipment which emits radiations that could be used as navigational aids by enemy aircraft.

The Treasury Department would have no objection to the enactment of the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

THE SECRETARY OF COMMERCE,
Washington, August 22, 1951.

HON. ROBERT CROSSER,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in further reply to your request dated July 25, 1951, for our comments with respect to S. 537, an act to provide for the greater security and defense of the United States against attack, and for other purposes.

This act would provide authority for administrative control of electromagnetic radiation whenever such control is deemed necessary to prevent or minimize use of such radiation as a navigational aid in an attack upon the United States.

The coverage of S. 537, as approved by the Senate, is limited to those radiations which would appear to assist enemy navigation. In our opinion this amendment effects an improvement of the bill as originally introduced. Legislation as here proposed is necessary for our national security and we therefore recommend its enactment.

We are advised by the Bureau of the Budget that it would interpose no objection to the submission of this report. If we can be of further assistance in this matter, please call on us.

Sincerely yours,

THOMAS W. S. DAVIS,
Acting Secretary of Commerce.

RADIO-TELEVISION MANUFACTURERS ASSOCIATION,
Washington, D. C., August 20, 1951.

HON. ROBERT CROSSEY,
*Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: The Radio-Television Manufacturers Association is pleased to comply with the suggestion of your committee's staff that it inform the committee of its views on S. 537. This bill, passed by the Senate and now pending before your committee, would amend section 606(c) of the Communications Act to grant to the President certain emergency powers over electromagnetic radiation devices, complementary to his existing emergency powers over radio stations.

The Radio-Television Manufacturers Association has no objection to the bill in its present form, but believes that it now grants all conceivably needful emergency powers and represents the outer limits of authority which ought to be granted.

Sincerely yours,

GLEN McDANIEL.

The CHAIRMAN. Our first witness this morning will be Maj. Gen. Francis L. Ankenbrandt, Director of Communications, United States Air Force.

**STATEMENT OF MAJ. GEN. FRANCIS L. ANKENBRANDT, DIRECTOR
OF COMMUNICATIONS, UNITED STATES AIR FORCE**

General ANKENBRANDT. I am prepared to testify.

The CHAIRMAN. Will this be an open hearing?

General ANKENBRANDT. Yes.

The CHAIRMAN. I understood that it was to be a closed hearing.

General ANKENBRANDT. If you want anything in a closed hearing, we will be glad to give it to you.

The CHAIRMAN. You may proceed.

General ANKENBRANDT. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before this committee to discuss the need for the adoption of the electromagnetic radiations control bill. The purpose of this legislation is to provide the necessary executive authority to control electromagnetic radiations during hostilities or a proclaimed emergency.

One of the primary missions of the United States Air Force is the defense of the United States against air attack. In order for the Air Force to fulfill its responsibilities in this regard and in order

to develop a defense system for the United States against air attack, measures must be taken to deny to or to minimize the use by a potential enemy as air navigational aids any electromagnetic radiations which are suitable for the purpose and which could be controlled by the United States.

I would like to state at this point that is the reason why I am speaking for the Department of Defense on this particular matter, since it is a Department of Air Force responsibility under the Department of Defense.

Current concepts of warfare indicate the necessity of controlling electromagnetic radiations in the United States, its Territories and possessions, for the purpose of denying their use to a potential enemy for the navigation of piloted or pilotless aircraft or missiles directed toward targets in the United States.

The only section of existing law (the Communications Act of 1934) which provides authority to close any station without the licensee's consent or public hearing is section 606—War Emergency—Powers of the President. The applicable paragraph of this section reads as follows:

(c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communications and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

Since the President's proclamation of the existence of national emergency on December 16, 1950, the authority under section 606 (c) of the Federal Communications Act of 1934 is now available. However, the limits of the authority under section 606 are not felt to be broad enough for the purposes set forth above. Section 606 (c) limits the power to the control of stations for radio communication where radio communication is defined as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds. * * *" The existing law is inadequate because many new types of devices which emit electromagnetic radiations are not believed to fall within the definition quoted above.

There is evidence that potential enemies possess the atomic bomb and are diligently striving to develop long-range piloted aircraft and guided missiles for carrying the atomic bomb, or any other future type of weapons. Instruments utilizing electromagnetic radiations continue to be excellent means for solving navigational problems for piloted aircraft and guided missiles.

During World War II the German military made some use of electromagnetic radiations emanating from the British Isles as aids to air navigation. It is known that many German scientists are now working for the U. S. S. R. It is believed that some of these scientists are undoubtedly working toward the development of equipments capable of utilizing electromagnetic radiations for the purpose of aids to navigation. Furthermore, the art of precise airborne direction finding and homing is very well advanced and widely known.

In view of the destructive power that can now be delivered by small numbers of aircraft or missiles it is imperative that we deny or minimize any aid which an enemy might derive from electromagnetic radiations which are susceptible to our control. Because of the speed with which these attacks can be delivered, close coordination of the interested agencies will be essential in order to insure that the controls are applied in time to be effective.

Based upon intensive research, .010-100,000 megacycles per second appears to be the most desirable and useful portion of the electromagnetic spectrum for navigational assistance. In the implementation of the controls requested, this portion of the spectrum would be further broken down into subbands of frequencies. As an illustration, the lower portion of the spectrum will be most beneficial for "initial guidance" for long-range navigation. Based on current planning the .010-100,000 megacycles per second band will be divided into three main divisions: (a) Initial guidance, (b) Mid-course guidance, (c) Terminal guidance.

It is not contemplated that a complete shut-down of the .010-100,000 megacycles band will ever be necessary or ever desirable throughout the United States. However, in order to meet any contingency of a surprise attack or sneak raid, the President should have the authority to control in whole or in part, for such time as appropriate, operations in the .010-100,000 megacycle band to the greatest advantage of the Nation. The United States Air Force is preparing extensive plans in coordination with the Federal Communications Commission, the Civil Aeronautics Administration, and other interested governmental and nongovernmental agencies to implement the proposed bill.

The exact portions of the electromagnetic spectrum for which control is planned at any one time will be studied carefully in conjunction with the state of the art of homing devices so that only those devices which may give positive navigational guidance to a potential enemy are included. It is not intended that the military will exercise peacetime control of normal transmissions or radiations to the detriment of authorized individuals and public activities except when there is evidence that the international situation has deteriorated to an alarming state and that a raid is imminent. It is contemplated that this proposed legislation will provide the authority to counteract the activities of saboteurs, fifth columnists, or other subversive elements who would use or attempt to use electromagnetic radiations to guide aircraft and missiles of a hostile nation.

S. 537, as passed by the Senate, has been very carefully reviewed by the Department of Defense including the Army, the Navy, the Air Force, and the Joint Chiefs of Staff and all concur that a requirement exists for the enactment of firm, broad statutory authority which will provide a legal means of control by the President, in the interest of national security, of any device capable of emitting electromagnetic radiation which could be utilized for positive navigational guidance by an enemy attacking the United States.

Admittedly, the measure is very broad insofar as the radio frequency band which it covers is involved. This is necessary in order to have a law which would take into account current and future developments in the electronic-guidance field.

The key to the problem is the determination of the value of radiated electromagnetic energy to a foreign enemy as an aid to military aggression. The threat of any one particular type of radio transmission will vary from time to time. In considering the problem it should be appreciated that an enemy may navigate his aircraft, ship or submarine with varying degrees of success to the general area of a target by a number of means other than direction finding on a radiating device. These means include celestial navigation, dead reckoning, radar mapping, etc. These devices which radiate in very broad radio frequency bands and which are not fixed in place or times of operation would probably be of little immediate value to an enemy. For example, although it is theoretically possible to locate New York City by its electrical noise level (from sources of automobile ignition, defective light bulbs, arcing switches, etc.), it is considered unlikely that the degree of accuracy to be obtained by such navigation would be of sufficient value to warrant the development of homing devices for this particular purpose or the dependence on this means of navigation as the primary aid for precision target location. In this respect an enemy could ill afford to attack the United States without reasonable assurance of some success in striking the intended targets. On the other hand, further study of this particular field might materially change the importance of this method of location.

There are two general types of devices for which control must be provided:

(a) Those devices, the existence, location, and hours of operation of which can be determined by the enemy through his intelligence channels, and which will permit either a good degree of precision in locating a target, or long-range navigation to the target area.

(b) Those devices, which might be operated by enemy agents for the purpose of providing guidance to their nation's aircraft, ship or submarine. To satisfy the above requirements, the wording of the bill must be sufficiently broad to include any device which might fall in the above classification.

Although it may be extremely unlikely a war would start without a period of prior warning, it should be kept in mind that one of the basic principles of warfare is surprise. Since the United States will not precipitate a war, it can be expected that war would be forced upon us under circumstances favorable to the enemy. The development of weapons of mass destruction has made the element of surprise (i. e., the first blow) perhaps the most important phase of modern warfare. The United States must be prepared for that first blow in order to minimize its effect and permit immediate retaliation. The United States Armed Forces have, during the past few years, been making every possible effort to restore the Department of Defense to a position as a potent military force. The requested legislation is a part of the task of restoration and reorientation of the forces to the time table of warfare in the air-atomic age. In addition to the authority to control stations, there must be readiness on the part of those who must carry out the controls. To this end the Air Defense Command as stated above is preparing extensive plans to accomplish this and has carefully coordinated this planning with the Federal Communications Commission, the Civil Aeronautics Administration and other agencies.

Mr. Chairman, that terminates my statement for the morning.

Mr. BECKWORTH. General, I have been handed an amendment that has to do with the penalty provision. I will read the amendment:

AMENDMENT TO S. 537

Page 2, strike out line 15 through page 3, line 4, and insert in lieu thereof the following:

"(h) Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than \$5,000, except that any person who commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both."

Will you explain what you have in mind by the latter part?

General ANKENBRANDT. I think general discussion of the bill as it was passed by the Senate brought out the point that if somebody is trying to really hurt us through sabotage, or fifth-column work, the penalty prescribed in that bill is totally inadequate. It has been suggested that the penalty be broken down into two classes, those which are either willful or of a minor degree of hazard to the United States in one class, and those where you are really having someone trying to do us dirt. There the punishment should be more severe.

I think I can speak for the Department of Defense and state that that amendment would be satisfactory if the committee chooses to include it.

Mr. BECKWORTH. It is definitely acceptable?

General ANKENBRANDT. It is acceptable; yes.

Mr. BECKWORTH. And you feel that it is needed?

General ANKENBRANDT. I would say that it is needed.

Mr. PRIEST. I would like to ask this question: If the penalty proposed in the amendment is inadequate, and if a person willfully seeks to injure the United States, or give advantage to a foreign nation, it seems to me that such an act borders pretty close on treason, and it seems to me that this would be an inadequate penalty for treason. I am wondering if it is strong enough.

General ANKENBRANDT. I understand that the question of prescribing punishment for various degrees of treasonable acts is a problem that vexes the Congress very much. I would not care to state that I think this is adequate or inadequate, but it is acceptable.

Mr. HARRIS. As I understand, what you are proposing to do is to amend the Federal Communications Act, which presently defines "radio communication" or "communication by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds * * *" so as to include electromagnetic radiation as well as these other things that I have just described; is that true?

General ANKENBRANDT. It is intended to extend the authority to include radiating devices that are not necessarily communication devices.

Mr. HARRIS. That is what I have in mind. You feel that this is rather broad language, do you not?

General ANKENBRANDT. Yes, it is broad, and intentionally so, for the reasons that I tried to explain in my statement.

Mr. HARRIS. I appreciate that. Do you think that such broad language should be permanent legislation?

General ANKENBRANDT. Well, since the authority is only brought into being as a result of other action and not by the passage of the bill itself, and since the devices that might be of use to an attacker change from year to year, it seemed to us that the best way to do it would be to write the bill in broad language. I think that we all realize it is rather difficult to amend legislation, or to write new legislation in a hurry. It should be well considered, and for that reason it seemed to us that we should write it not only to cover those things that we know about today, but those things that we know are on the drawing board and may come to us next year or the year after.

The authority is brought into play by some other action. An executive order is based on that.

Mr. HARRIS. Did we have this authority during World War II?

General ANKENBRANDT. We had the authority that was contained in the current act brought into play immediately at the start of World War II.

Mr. HARRIS. I am talking about the authority that you are asking for in this bill.

General ANKENBRANDT. The authority that we have now under section 606 (c) of the Communications Act of 1934, which is existing law.

Mr. HARRIS. Did you run into this other problem of radiation during World War II?

General ANKENBRANDT. We did not during World War II because some of these devices we are talking about were only starting to be developed and only came to light, you might say, late in that war.

Mr. HARRIS. As I understand it, you have two purposes in mind: One is, in case of attack, you would have authority to control this radiation.

General ANKENBRANDT. Yes.

Mr. HARRIS. In order to protect the public generally.

General ANKENBRANDT. That is right.

Mr. HARRIS. And No. 2, in case there is someone who wants to commit espionage, or act against the United States by aiding the enemy, this will give you authority to deal with that type of situation?

General ANKENBRANDT. That is correct; yes.

Mr. HALL. Does not this even go further? On line 7 of the bill you have these words: "or in order to preserve the neutrality of the United States."

Have you ever used that language before, and what does it mean?

General ANKENBRANDT. Mr. Hall, that is the wording in the current law, and it has not been changed. We do not know what it means for sure. We did not attempt to strike it out of the old bill, or the bill now being amended. That is in the present law, and we saw no reason for raising the question whether it should be deleted or not.

Mr. HARRIS. I would like, if the gentleman will permit, to say that this proposes to change 606 (c) of the Communications Act of 1934 to include "if he deems it necessary in the interest of national security or defense." Then further, "or devices capable of emitting electro-

magnetic radiation * * * ,” and then further, “or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond 5 miles * * * ”

That is just language to amend the present law and the other language remains as is.

Mr. HALL. I have the bill before me.

Mr. PRIEST. Could you name specifically three or four of these devices other than those used for communication of sounds or pictures—the regular communications devices?

General ANKENBRANDT. Yes. I would mention a radar station. It is not generally considered to fall within the meaning of this act, although some people say it does. It is certainly doubtful that it does. A powerful electronic heating device that is hooked onto an antenna is not included in the current authority. It is proposed that when it is radiating it would be brought in under the authority of the new act. We had a lot of discussion before the Senate on that point, which resulted in putting in a proper description that it must be suitable for a navigational aid beyond 5 miles. That took out a lot of the odds and ends that seemed to worry a lot of people as to whether they were controlled or not controlled.

Mr. PRIEST. That is one reason that I asked the question. For instance, an engineer came to me and said that the language of the bill as originally introduced would cover a therapy pad used by a doctor to apply thermo heat. Would this amendment include that?

General ANKENBRANDT. I would say no, it would not, as the amendment now reads.

Mr. PRIEST. Because such radiation would not exceed 5 miles. That is the clause that takes out those little devices.

General ANKENBRANDT. Nor is it likely that it would be suitable as a navigational aid. Under two clauses it is stricken out.

Mr. HARRIS. If there is one of these powerful therapy devices attached to an antenna then it would come under the amendment?

General ANKENBRANDT. Yes.

Mr. WOLVERTON. I realize what might have been a proper subject of inquiry with respect to the breadth of this power that is being given probably should have been asked at the time the original act was passed in 1934. As it comes before us at the present time it appears as if all that is being done is an attempt to supply some wording to take care of what might seem to be a deficiency in the earlier law brought about through the progress that has been made in this art. I am astounded to think that a provision of this kind could have been originally adopted apparently without any more consideration than was given to it.

For instance, as Mr. Hall pointed out, what do we mean by the words “or in order to preserve the neutrality of the United States”? It is very hard for me to connect that up with radar without some specific illustration being given.

It would seem to me, under this, the power that is granted would be similar to an act that would deny newspapers the right to publish news in time of war, or a threat of war, or a state of public peril, “Or to preserve the neutrality of the United States”—I just cannot figure the significance of those words. I can understand the impor-

tance of them from the standpoint of protecting our country against sudden attack in time of war, or a threat of war, but when you come to apply it to preserving the neutrality of the United States that raises questions in my mind. I wonder why that general power was given.

In the letter that was written to this committee by the Assistant Secretary of the Air Force, he said, "It is requested that further justification for the urgent necessity of this legislation be given to you in secret session." If there is additional information that we should have, as those words would indicate, it would seem to me, Mr. Chairman, appropriate that the committee be in secret session to obtain the information that the Assistant Secretary of the Air Force will justify this legislation.

Now may I ask this question: This law was in effect at the time of Pearl Harbor, was it not?

General ANKENBRANDT. The law was, but the authority for invoking the authority was not available. It was made available immediately thereafter.

Mr. WOLVERTON. I received the impression from your statement in answer to one of the questions by one of the members of the committee that this was adopted in the act of 1934.

General ANKENBRANDT. It was. The law was in existence on the date of Pearl Harbor.

Mr. WOLVERTON. Was there opportunity at that time under the law for the President, by proclamation, to have done the thing that this act provides for?

General ANKENBRANDT. There was with respect to those devices that are agreed are covered by the current law. That is correct.

Mr. WOLVERTON. Had there been any such proclamation issued by the President at that time?

General ANKENBRANDT. It was issued 2 days thereafter.

Mr. WOLVERTON. That was after the horse was out of the stable. The purpose of it is to protect us against sudden attack, and with this law in existence at that time I am surprised, if it is as important as you now represent it to be, it was not utilized at that time. In fact, there was existing a war at that time, if not with Japan, it was a war condition, and a threat of war, and there was a state of continued public peril.

What kind of situation could you conceive of that would utilize this power now that was not seen necessary at that time?

General ANKENBRANDT. Mr. Wolverton, I am not too well prepared to discuss the historical facts of that occurrence that you are talking about, but I can cite what the Department of Defense is doing now about that.

Mr. WOLVERTON. If there is anything that you feel you should not say in a public meeting, have no hesitancy in so expressing.

General ANKENBRANDT. What I am saying is for the record. The Department of Defense has cleared for Presidential signature an Executive order to bring into effect now the authority contained in the current law, and as soon as the Congress amends the current law, if they so see fit, we intend to pursue that Executive order for bringing the new authority into operation, since the President has already proclaimed a national emergency. That is one of the reasons why the

authority contained in both the current law and in the amended law can be brought into force.

Mr. WOLVERTON. Would you say that the present situation would come within the words of a threat of war so as to justify the issuance of a proclamation of this type at this time?

General ANKENBRANDT. It comes under the proclamation of national emergency which has already been issued. That was issued, I believe, in December of 1950.

Mr. WOLVERTON. Can you remember offhand what the national emergency is that is referred to?

General ANKENBRANDT. It is the proclamation of the President on December 16, 1950.

Mr. WOLVERTON. Do you have it before you?

General ANKENBRANDT. I do not, no, sir.

Mr. WOLVERTON. I am just wondering what the basis of the emergency situation was.

General ANKENBRANDT. I would be glad to have that brought forth. We seem to think what brought it on—and the exact words I am not prepared to give at this time, since I have not seen that recently—was the Korean situation.

Mr. HARRIS. Is it not a fact that before the Defense Production Act of 1950 could be put into effect, such an emergency had to be proclaimed?

Mr. WOLVERTON. I do not know. The Korean emergency, I would assume, started in June of 1950. This proclamation or order was issued in December of 1950. I am just wondering what the emergency situation was there.

Mr. PRIEST. Some of the authority conferred on the President by the act was predicated on the basis of a national emergency.

Mr. WOLVERTON. Assuming that an enemy would feel inclined to strike at the present moment, would this law be helpful in any way?

General ANKENBRANDT. It would, sir, yes.

Mr. WOLVERTON. In what respect?

General ANKENBRANDT. In that the controls that are sought here, which are, as you know, clearly explained, merely remedy the wording that should probably have been in the law when it was written back in 1934. It covers the various radiating devices that we know would be of help to an enemy in getting positive navigational guidance should the enemy attack us. And the authority to do something about that, which is asked for in the amendment, does not exist today.

Mr. WOLVERTON. Assuming an enemy plane would start from Europe to this country today, would it need any navigational aid to find New York or any other place it wanted to strike, other than the navigational aids it would have at its own disposal? In other words, would it be necessary for it to have the aid that would come from the means or facilities you suggest should be denied to them?

General ANKENBRANDT. I would like to answer that in this way: We presume, just as you do, that they would not need outside assistance other than that which they prepare to bring with them for the accomplishment of their mission. However, we all know that the most convenient and most universally used air navigational aid is a homing device carried aboard aircraft to make use of such ground radiating stations as are within the sphere of the frequency band

of that particular gadget. Some are good and give them precise information; others are not so good. So I would say this, that, although they probably could get along without it, it is a very great aid and comfort to them to have the additional aid. Therefore, it should be denied them.

Mr. WOLVERTON. I can very readily see why it would be an additional aid, probably, but the point I am making is that in case of a sudden attack it certainly would not preclude the enemy from striking us whether this law was amended or was not amended.

General ANKENBRANDT. The ease with which he could get through the air defense sector would be involved in that. In other words, he might find, through those additional aids, he could steer around an area known to be heavily defended and come against one not so heavily defended.

Mr. WOLVERTON. Do I understand as a result of finding an emergency existing in December last, assuming it is still continuing, that the President would have the power to issue a proclamation under this that would have the effect that is intended by this section?

General ANKENBRANDT. Yes, sir. We feel that the authority, just as you pointed out, should be in the hands of the Federal Communications Commission and the Civil Aeronautics Authority and the Department of Defense before that particular instant occurs that we must be prepared for as being a surprise incident. Therefore, the interval between initiating such a strike, such a surprise attack, and the controls being put into effect is too short to permit the issuance of another proclamation or permit of the perfection of a plan or anything else. We feel all that should be in existence in advance.

Mr. WOLVERTON. What I am trying to get at is this, that under present conditions people generally think there is a threat of war. Certainly all the public statements that have been made by officials of standing would indicate there is a threat of war at the present time. Would that in itself justify a proclamation that would be as effective as this would indicate in carrying it into effect?

I do not expect you to decide questions of policy, but I am trying to find out what is meant when you say "threat of war" and whether those tremendous powers should be exercised under conditions similar to those which prevail at the present time. The wording would seem to me to indicate it could be done if the President wished to do it.

General ANKENBRANDT. The feeling of the Department of Defense is that we, working with the other Government agencies and the civil broadcasters and so forth, should have a plan ready for immediate execution today in the event that overnight things should worsen so badly that we might find ourselves attacked tomorrow. We feel we should have that authority and plans perfected under that authority.

Mr. WOLVERTON. I agree with you that every step should be taken to be prepared, but I find in the case of Pearl Harbor we had many plans whereby we could have stopped the attack that was made on Pearl Harbor.

General ANKENBRANDT. You are quite right on that. The authority contained in the act and the plan to execute that authority was quite evidently not in existence on December 7. We are trying to prevent exactly that by this present course of action.

Mr. WOLVERTON. I do not wish any questions I have asked to indicate any lack of desire on my part to do all that is necessary to be done to provide an adequate defense. As I previously said, I think the language that is contained in this has already been the law since 1934. I suppose the answer is that no proclamation has been issued under it that could have any proper effect in all those years, and in the future it would take a special act of the President, with all the responsibilities he has. At the same time, it seems to me to be very loosely drawn in the way in which it is stated—that “there exists war”—that is easy—“or a threat of war”—I do not know—“or a state of public peril.” I do not know just what would come within the classification “public peril” which would justify a proclamation of this kind other than the existence of war or threat of war. And then “or in order to preserve the neutrality of the United States.” That is a hard one for me to understand. But as it is already in the law, I suppose it is not necessary for me to get too much concerned.

The CHAIRMAN. Gentlemen, I am going to have to ask you to leave the room for a few minutes. I promised to hear a matter in executive session.

(After a brief recess, the committee reconvened, Hon. Lindley Beckworth presiding.)

Mr. BECKWORTH. The committee will come to order.

General ANKENBRANDT, it is my understanding that some of the others may wish to ask you some questions.

Mr. CHENOWETH, do you have any questions?

Mr. CHENOWETH. General, I have been very much interested in your statement. You referred to the Air Defense Command. I am very happy to tell you that the Air Defense Command is located in my district, in the city of Colorado Springs, and, of course, I am very much interested in that group.

Do I understand the Air Defense Command is the organization that is principally interested in this legislation and they are charged with the responsibility of enforcement of the law if we should pass it, or what is their connection with it?

General ANKENBRANDT. As the agency of the Department of Defense, the Air Defense Command is the field agency that executes it in conjunction with the Federal Communications Commission personnel, who work with us directly on it.

Mr. CHENOWETH. In other words, it is a direct responsibility of the Air Defense Command?

General ANKENBRANDT. Yes; to execute it once the authority has been obtained.

Mr. CHENOWETH. In other words, the responsibility for carrying out the law would fall upon the Air Defense Command?

General ANKENBRANDT. As a joint authority with the Chairman of the Federal Communications Commission and the Administrator of CAA.

Mr. CHENOWETH. I understand the Federal Communications Commission are more or less dropped out of the picture, are they not, if this bill should become law; that the Air Defense Command will be in charge of the control?

General ANKENBRANDT. There are, let us say, three categories of devices that we are thinking of. One is those which the Federal Com-

munications Commission clearly has authority to certificate. Those will come under their authority. The second category is those which are under the control of the Civil Aeronautics Authority, and finally, there is the balance of radiation devices as to which the authority for controlling is not clear. So that it is really a joint plan involving the three agencies—the Air Defense Command, the Federal Communications Commission, and the CAA.

Mr. CHENOWETH. If the bill should become law, is it not a fact that then the Air Defense Command would be supreme in that field; in other words, they would determine what stations should be removed from the air and what other restrictions should be imposed over civilian and CAA operations?

General ANKENBRANDT. That is right; but that would be based not on a unilateral plan; that would be based upon an interdepartmental plan of all of the Government agencies involved, including Commerce and FCC. We would not be qualified, you might say, on our own in the Air Defense Command to point out specifically what stations should and should not be controlled.

Mr. CHENOWETH. Who will make those decisions?

General ANKENBRANDT. Those decisions are based on a study of the problem by the technicians who are working on that in the Air Defense Command, in the FCC, and in the CAA.

Mr. CHENOWETH. You do not refer to those agencies in this legislation; do you?

General ANKENBRANDT. No, sir. This bill gives the powers to the President.

Mr. CHENOWETH. You mentioned the other two agencies, but there is no reference to them in this bill at all; is there?

General ANKENBRANDT. No, sir.

Mr. CHENOWETH. What I am trying to get at is, if this bill does become law, then the Air Defense Command becomes the sole arbiter of the facts and is supreme in the field of determining what operations could continue and what should be suspended. I suppose it would have to be that way.

General ANKENBRANDT. Where agreement cannot be reached, certainly you are right. If someone has to make a decision, they are the ones to make it.

Mr. CHENOWETH. With whom will the agreement be made; who would enter into the negotiations prior to the agreement? It would be the other two agencies; is that right?

General ANKENBRANDT. Yes, sir.

Mr. CHENOWETH. That would be the procedure you have in mind?

General ANKENBRANDT. Exactly.

Mr. CHENOWETH. If it should become law, then the Air Defense Command consults with the Federal Communications Commission and the CAA?

General ANKENBRANDT. That is right.

Mr. CHENOWETH. To determine to what extent their activities or operations should be curtailed or suspended?

General ANKENBRANDT. We like the word "controlled" rather than "curtailed." There is quite a difference. You could control a station that would have a positive navigational aid without curtailing it or closing it. That is what we have in mind.

Mr. CHENOWETH. You do not contemplate, then, closing many stations?

General ANKENBRANDT. No, sir.

Mr. CHENOWETH. You can obtain what you are seeking here without canceling the operations of any station?

General ANKENBRANDT. That is correct. That is a detail of the plan which is classified and would require an executive session to go into.

Mr. CHENOWETH. I am very interested in it, due to the fact the Air Defense Command is in Colorado, and we are very happy to have it. We recognize the importance of the Air Defense Command to the defense of this Nation.

Mr. CARLYLE. General, I understand from a reading of this bill that this is entirely emergency legislation.

General ANKENBRANDT. That is correct.

Mr. CARLYLE. And you consider we are in an emergency?

General ANKENBRANDT. That is right.

Mr. CARLYLE. Those are all the questions I care to ask.

Mr. BECKWORTH. Thank you very much, General. We appreciate your testimony.

The next witness is Hon. Edward M. Webster, Commissioner, Federal Communications Commission.

STATEMENT OF EDWARD M. WEBSTER, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. WEBSTER. Mr. Chairman and gentlemen of the committee, my name is E. M. Webster, and I am a member of the Federal Communications Commission. I am appearing here at the invitation of the committee to present the views of the Commission on S. 537, which is a bill, passed by the Senate on July 23, 1951, to amend section 606 of the Communications Act of 1934, as amended.

The purpose and intent of this bill, as understood by the Commission, are, through section 1 of the bill, to clarify the scope of the powers of the President as given by section 606 (c) of the Communications Act of 1934, as amended, and, through section 2, to establish certain criminal sanctions which may be used in case of violation of orders issued pursuant to an exercise of the President's authority under the provisions of the entire section 606, including, of course, section 606 (c). It is the Commission's understanding that there is no intent or purpose to modify or alter the Commission's jurisdiction by this bill and that this jurisdiction is not in fact affected by the bill.

At present, section 606 (c) authorizes the President, in certain specified circumstances, including, among others, a proclaimed state of national emergency, war, or threat of war, to exercise certain powers with respect to radio. Thus, he is given power (1) to suspend or amend the rules and regulations of the Federal Communications Commission applicable to any radio station within the jurisdiction of the United States, (2) to order the closing of any station for radio communication and the removal therefrom of its apparatus and equipment, and (3) he may authorize any Government department to use or control any such station, its apparatus and equipment, under such regulations as he may prescribe, upon just compensation to the owners.

The legislative history of this bill during its consideration in the Senate shows that it resulted from the existence of certain doubts, especially on the part of the military, with respect to the scope of the President's powers under section 606 (c). The military were concerned with minimizing the use that could be made by enemy aircraft of electromagnetic radiations produced by devices being operated in this country, and believed that there were many such devices other than those primarily used or intended to be used for radio communication, such as medical diathermy, electronic heaters, and the like, that could be so used. In order to remove any question as to whether the President's emergency powers with respect to radio as provided by section 606 (c) were limited to stations for radio communication, the military brought about the introduction of this bill.

The President's powers under section 606 (c), as they would be clarified by section 1 of this bill, would be clearly broad enough, in the opinion of the Commission, to encompass not only the control, closure, and use of stations for radio communication, but also the control, closure, and use of electronic devices of any kind capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles which might be of navigational aid beyond the distance of 5 miles to the aircraft or missiles of an enemy engaged in an attack by air upon this country.

To summarize, section 1 of the bill (1) would clarify the scope of the President's powers under section 606 (c), (2) would appear to accomplish the objectives of the military in relation to the problem of controlling electromagnetic radiation from the standpoint of defense against air attack, and (3) would not in any manner affect the jurisdiction of the Federal Communications Commission. As so viewed, the Commission is in favor of the enactment of section 1 of the bill as passed by the Senate.

With respect to section 2 of the bill, which would provide a new subsection, numbered 606 (h), establishing certain criminal sanctions for the knowing violation of orders issued pursuant to an exercise of the President's powers under section 606, the Commission is of the opinion that such an amendment should be adopted.

As the Communications Act now stands, none of the specific subsections of section 606 contains, in itself, any criminal sanction or penalty, nor is there any one criminal provision expressly applicable to section 606 as a whole. It is therefore necessary to look to the general criminal provisions of the Communications Act which are found in sections 501 and 502, in order to determine whether and to what extent these general provisions are applicable to an exercise of the President's authority under section 606.

Section 501 makes it a felony, punishable by a fine up to \$10,000 or imprisonment up to 2 years, for any person willfully and knowingly to do anything "in this act prohibited or declared to be unlawful" or to fail to do anything "in this act required to be done" or to cause or suffer "such omission or failure." None of the provisions of the present section 606, in and of itself, requires anybody to do anything, or to refrain from doing anything; instead those provisions authorize the President, or his delegate, to take certain types of action. Thus, for example, if the President ordered a radio station to be closed, or if, as would be clearly possible under the proposed new language of

section 606 (c), the President's delegate ordered the operators of certain types of electronic equipment to refrain from operating such equipment during the hours in which an air raid is in progress, it could be argued that persons refusing to comply with such orders are doing nothing prohibited by or declared unlawful "in this act" or refusing to do things "in this act required to be done." Thus, it is possible that violations of orders made pursuant to an exercise of the President's authority under section 606 would be held not to be in violation of section 501 of the Communications Act.

Section 502 would appear to be even more doubtful of application. This section makes it a misdemeanor, punishable by a fine of \$500 for each day of offense, for any person who willfully or knowingly violates any—

rule or regulation, restriction or condition made or imposed by the Commission under the authority of this act * * * or made or imposed by any international or wire communications treaty or convention. * * *

Except for violations of treaty regulations, which are not relevant to the present discussion, this provision is restricted to violations of rules and regulations "made or imposed by the Commission under the authority of this act." In view of the strict construction of any criminal sanction in any statute, it is possible that any order or rule issued by the Commission pursuant to a delegation of authority from the President under section 606 may not be considered to be one "made or imposed by the Commission under the authority of this act." If the President himself, or any delegate of his other than the Federal Communications Commission, issued a rule or order pursuant to an exercise of the President's authority under section 606, the language, above quoted, of section 502 would make it appear that a violation of such rule or order would not be punishable under section 502 for the reason that the rule or order so violated would not be a rule or order of the Federal Communications Commission as specified in section 502. On the other hand, a violation of the same rule or order, if promulgated by the Commission, would appear to be punishable under the terms of section 502. The manifest incongruity of this situation would appear to permit the conclusion that not even the violation of a rule or order of the Commission issued pursuant to a delegation of authority from the President under section 606 would be punishable under section 502.

For the reasons above indicated, the Commission believes that a new subsection should be written into section 606, incorporating express criminal sanctions for the knowing violation of any orders issued pursuant to an exercise of the President's powers under the provisions of any of the subsections of section 606. Section 2 of the bill appears to the Commission to achieve this general objective. As to the particular details of the criminal sanctions set forth in section 2, the Commission refrains from taking any specific position for the reason that those details are considered to fall outside of the special competence of the Commission.

On behalf of the Commission, I wish to thank this committee for this opportunity to appear and express the views of the Commission, and I wish to assure the committee that the Commission will be glad to furnish any additional assistance that may be desired.

Mr. BECKWORTH. Are there any questions?

Mr. WOLVERTON. I think the reasoning that characterizes your statement, Commissioner, justifies the consideration by this committee of a more strict section 2 than is in the bill.

Do you feel that sections 501 and 502, under which you do have authority to act, should be the subject of an amendment, or can it be done, in your opinion, under section 2 of the act we have before us?

Mr. WEBSTER. We think there is need for a provision similar to this section 2.

Mr. WOLVERTON. I note that in section 501, to which you have referred, the penalty is far more severe for violation of a rule or regulation of the Commission or refusal to perform a duty required by the Commission than that which is provided for in section 2 of this bill. It seems to me the importance of the matter would require a heavier penalty than that which now appears in section 2 and more in accord with the penalty provided for in sections 501 and 502.

Mr. WEBSTER. I think your analysis is a very good one, and it seems to me personally, at least, it is not consistent. But we are taking no position on that as a Commission.

Mr. WOLVERTON. Because of the modesty that you express of not feeling it is within your special competence as a Commission to state what it should be, I do not suppose under those circumstances you prepared any amendment.

Mr. WEBSTER. We prepared no amendment; no sir. We think the language here is perfectly satisfactory. On the question of the exact figures as to the fines, we think that is a matter that is not within our competence to specify.

Mr. PRIEST. If the gentleman will yield, let me ask: Is the Commissioner familiar with the amendment that has been proposed to section 2?

Mr. WEBSTER. I have not seen it, and I only heard about it, I think, when you read it a few minutes ago.

Mr. PRIEST. May I ask, if you have the language of section 501 that has been referred to, if the language of this amendment is not somewhat similar if not identical with the penalty provisions of the act?

Mr. WOLVERTON. Personally, I do not think it is strong enough.

Mr. PRIEST. You do not think the amendment is strong enough?

Mr. WOLVERTON. No.

Mr. PRIEST. And the amendment is stronger than the language in the bill.

Mr. WOLVERTON. In a measure, that is so. It has a provision at the end there that fixes a penalty of \$20,000, which is all right in itself, but I think the preceding part should carry a stiffer penalty.

Mr. PRIEST. May I ask this question: I believe the language in this amendment—that is, the latter part of the amendment—providing for a \$20,000 fine or imprisonment for not more than 20 years, or both, is similar to the language in the Atomic Energy Act for similar offenses. I checked it earlier, and I thought it was. I was thinking the same thing you are expressing, Mr. Wolverton, that if we did anything to it, we might make it stronger. The Atomic Energy Act, reading from paragraph (b), says:

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act, other than those specified in subsection (a) * * * shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever

commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.

The latter part of the amendment here is identical with the same provisions in the Atomic Energy Act.

Mr. WOLVERTON. Section 501, to which the Commissioner has referred, makes it a felony, punishable by a fine up to \$10,000 or imprisonment up to 2 years, for any person willfully and knowingly to do anything in the act prohibited or declared to be unlawful. Then section 502 calls it a misdemeanor punishable by a fine of \$500 for each day of offense for any person who willfully or knowingly violates any rule or regulation, restriction or condition made or imposed by the Commission.

Those sections taken together are much stronger than that, even though it may have the background of the Atomic Energy consideration. I favor, in view of the importance of this matter, making it as strong as possible.

Mr. BECKWORTH. Are there any further questions?

Mr. McGUIRE. In the last week or two, I read in the newspaper that radio equipment was discovered in this country where they were communicating with people behind the iron curtain. Do you want to give the committee any information on that?

Mr. WEBSTER. I have no personal knowledge of that. I read that in the paper, but I was away for a few days and have not had a chance myself to check what is inside the Commission on that. I am sorry. I was away for a week, and that news release came while I was away, and I have not had a chance to find out what the facts were. If you would like to know, I will try to find out.

Mr. McGUIRE. It would be nice if you could get that information for us.

Mr. WEBSTER. I will carry that request back to the Commission.

Mr. BEAMER. I am just interested in knowing which organization or group will have the responsibility for finding or locating these different instruments that are emanating the electromagnetic radiation. Is it the responsibility of your Commission, the Air Corps, or which organization would ferret out and find these and report them?

Mr. WEBSTER. I think that would end up by a combination of reports from the various agencies, sifting through and coming to some central point. I hesitate right this minute to expand on that, without some consultation with the general, because I think he and others are making plans to implement that. I am not thoroughly familiar with how we are going to implement it.

Mr. BEAMER. How has it been done in the past? Has it been a function and duty of your Commission in dealing with it in peacetime?

Mr. WEBSTER. Oh, yes, it is a function of the Commission in peacetime and in wartime, too—to locate illegal stations; those not licensed. That is a fundamental of the act.

We have monitoring stations for that purpose. They are constantly on the air, cruising around to locate any stations that are operating illegally. Now, until the development of radio in these higher frequencies, that was a relatively easy job, hunting down the

illegal stations, but we are now in an area of the high-frequency bands, and unless you have a large number of people constantly policing the air, you are liable not to catch all of them.

Mr. BEAMER. The reason that I raised the question was to find out whether there would be any conflict between the Defense Department and your Communications Commission, or whether it is to be coordinated or just who is responsible.

Mr. WEBSTER. That effort is now under way. There are coordinating groups working now. We do have authority over every station that we license, so I am presuming for the moment that the actual legal action can be taken by this Commission through a plan that will be coordinated with all other Government agencies, including the military, with the military probably doing the biggest part.

Mr. BEAMER. You do have a specific function that you should retain?

Mr. WEBSTER. We have a function. It is in the bill and has always been there.

Mr. BECKWORTH. If you are working on the question of implementation, it would be appreciated by the committee if you could complete that work reasonably soon and make that a part of the record so that we will know how that will work.

Mr. WEBSTER. I will endeavor to do that, and if there is any classified material I will take it up with the clerk as to how it is to be handled.

Mr. BECKWORTH. It would be helpful to the committee in explaining the bill as it moves along.

The next witness is Mr. Ralph W. Hardy, director, Government relations, National Association of Radio and Television Broadcasters.

STATEMENT OF RALPH W. HARDY, DIRECTOR, GOVERNMENT RELATIONS, NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS

Mr. HARDY. I do not have a prepared statement, but I merely wish to put into the record the position of the industry with respect to this legislation and then I will be available to answer questions from the members of the committee.

I may say that I brought with me our attorney, Mr. Waselewski, and our director of engineering, Mr. McNaughten, both of whom will be pleased to answer questions which the committee may ask.

My name is Ralph W. Hardy. I am director of Government relations for the National Association of Radio and Television Broadcasters.

Our position with respect to S. 537, as it has been amended and passed by the Senate, is substantially this: that the bill in its present form, with the exception of the penalty provision which is new and has been added, does not affect the radio broadcasters. They were clearly included within that power under the original Communication Act of 1934, so we have no objection by virtue of the fact that we are not additionally affected, that is, by other than the penalty provision.

With respect to questions that have been put to previous witnesses on a new proposed amendment, we would like the opportunity to

consider that amendment very carefully and report back to this committee with our point of view.

Mr. BECKWORTH. Try to do that very soon.

Mr. HARDY. If we may be supplied with a copy of that amendment we will do that.

(The matter referred to above is as follows:)

NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS,
Washington, D. C., August 28, 1951.

S. 537, a bill to provide for greater security and defense of the United States against attack

Hon. ROBERT CROSSER,

*Chairman, House Interstate and Foreign Commerce Committee,
House Office Building, Washington, D. C.*

DEAR CONGRESSMAN CROSSER: In testimony before the committee on August 22, I was asked to examine the committee staff's proposed amendment to section 2 of S. 537, a bill to amend section 606 of the Communications Act of 1934. The staff's proposal would impose an additional penalty on any person who commits an offense under the section "with intent to injure the United States or with intent to secure an advantage to any foreign nation." Such an offense would subject the person to a fine of not more than \$20,000 or imprisonment for not more than 20 years, or both.

The National Association of Radio and Television Broadcasters, with a realization of the magnitude of the danger to our country should the technical facilities of radio be utilized in such a manner, expresses no objection to the inclusion of this penalty in the act.

Sincerely yours,

RALPH W. HARDY.

Mr. HARDY. Mr. Chairman, I would like to add to this informal statement one or two comments, particularly one going to Mr. Wolverton's question. Not having been confronted previously with the possibility of these emergency Presidential powers being exercised in periods that are not clearly stated as national emergency periods, but rather in terms of affecting this phrase of it that says "in order to preserve the neutrality of the United States," I might report that the industry is very greatly concerned with the possible exercise of power under that broad provision.

We recognize as an industry that when the President does proclaim a state of national emergency a great many other things happen in the country, and that under those conditions undoubtedly broadcasting, by virtue of its great powers, would be subject to special scrutiny.

Our attention to S. 537 was first alerted when we read in the letter of transmittal from Mr. Marx Leva, who was then Assistant Secretary of Defense, that the military wanted this power not only during periods of proclaimed emergency but during any period of strained international relationships. The broadcasters who have operated during the past years and who look ahead, find it difficult to conceive of a time in the immediate future when we would not be in a period of some strained international relationship. They would look with many misgivings on the exercise of these controls and regulatory powers during nonwar periods or nonemergency periods.

We, Mr. Wolverton, recognize that this goes to the original legislation in the Communications Act of 1934 and does not specifically involve this present bill because this bill merely picks up the language of the former bill.

One additional comment with respect to the attitude of the broadcasters of the country as to the function of these controls for electromagnetic radiation in connection with homing devices.

In statements before the Senate committee on this bill we made it clear that we feel that there is a grave question as to the efficiency of the control methods which have been devised, at least in their present state of evolution. We are not advised of any secret plans the military may have, but we have been exposed to many of the plans that have been promulgated for discussion. We feel we should point out to this committee, for example, that the mere control of broadcasting stations licensed by the Commission in this country should not give our citizenry cause for comfort in the sense that they would thenceforth be free from devices which would bring bombers in for accurate bombing of targets in this country. This one point seems to me to be particularly germane to the discussion: If exercising the powers which are sought by the military to be exercised jointly by them and the Commission and the CAA—and I believe that they were named this morning—all our domestic broadcasting companies in the country should be brought under control plans which would render them unusable for navigational aid to the enemy, there is not anything, so far as we have been able to determine, that would preclude enemy agents operating in this country from carrying portable transmitting equipment in a private automobile or a truck to designated places and setting that up immediately preceding a bombing attack on this country for use as a navigational aid.

In testimony given before the Senate committee by Mr. Curtis Plummer, Chief Engineer of the Commission, he was asked a question with regard to what monitoring service there was near Washington, and Mr. Plummer replied as follows:

Our nearest monitoring station is at Laurel. We have an around-the-clock crew at that particular station. However, as I say, they are working principally on cases that come to us from many sources such as other Government agencies, including General Ankenbrandt's shop—and they are principally cases where somebody comes in and says, "There is interference with my aviation frequency," or something, and we chase it down. We only sample check the spectrum looking for trouble. I do not know the exact figure, but I doubt if it is over 4 hours a day that we are just cruising to look for trouble.

He then explained that by "cruising" he meant sampling the entire spectrum to get spurious transmissions that have not been previously identified by the Commission. I merely open that question up because that is what is disturbing the broadcasters. Surely they are willing to be regulated and fitted into an over-all control for national security, but has consideration been given to the tremendous policing that would be necessary to take into account these spurious transmitters which would be set up almost on a moment's notice and at predetermined places which would provide sure navigational aids? Their locations could not be immediately ascertained except by triangulation and other factors known to the engineers, and by that time the enemy attack is upon us.

Those are the factors about which the broadcasters have real concern.

That is all that I have.

MR. BECKWORTH. Do you have any information that would indicate to you those factors have received any attention from the CAA and the defense agencies?

Mr. HARDY. Mr. Chairman, I am sure that both the military and the Commission are conscious of the problem that I have been talking about. I must confess that I have not heard any practical explanation of how they would plan to handle such an emergency situation.

Mr. BECKWORTH. If I understand your observations, you fear that possibly they would go ahead and pass this and that we may leave open an area perhaps larger and even more dangerous that we will not have devoted much time to; is that correct?

Mr. HARDY. That is precisely my position.

Mr. BECKWORTH. That is a helpful observation.

Mr. PRIEST. To get into this larger and perhaps more dangerous area mentioned by Mr. Beckworth, it would largely be a question of the plan for policing rather than legislation, would it not?

Mr. HARDY. I would suspect that is correct, Mr. Priest. It would involve, at least according to my own layman's knowledge of the problem, a tremendous army of people to maintain constant checking on the spectrum. Then I am not at all sure, on the basis of my probings to date, how long it would take the policing powers, once they had located a new signal on the air, to get to it and shut it off. Those are the factors which I think raise a real question.

Mr. BECKWORTH. That concludes the hearings.

We will now go into a brief executive session.

(Whereupon, at 12:15 p. m., the committee went into executive session.)

×